



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 17, 1995

Mr. Alberto R. Gonzales
General Counsel
Office of the Governor
State of Texas
P.O. Box 12428
Austin, Texas 78711

OR95-1088

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34956.

The Office of the Governor (the "governor") received an open records request for a copy of "the files of the following appointees as branch pilots." Among the responsive documents are certain records that you seek to withhold pursuant to sections 552.101, 552.102, and 552.111 of the Government Code.

The records you seek to withhold are each entitled "DPS Clearance Form" and contain only the following information: the respective individual's name, date of birth, drivers license number, whether and to what extent the individual has received traffic citations, the individual's criminal record, if any, the date the form was completed, and the initials of the DPS "administrator" who conducted the background checks. Of these categories of information, the only portions excepted from public disclosure are the notations that reveal whether the respective individuals have a criminal background; these portions must be withheld from the public pursuant to section 552.101. *See Gov't Code §§ 411.083, .084; see also 28 C.F.R. § 20.21(c)(2).*¹

¹Because the federal regulations governing the release of criminal history information explicitly prohibit the confirmation of either "the existence or non-existence of criminal history record information to any person or agency that would not be eligible to receive the information itself," *see 28 C.F.R. § 20.21(c)(2)*, this ruling should in no way be interpreted as confirming the existence of such information in these records.

None of the remaining information is of a "highly intimate or embarrassing" nature so as to invoke the protection of section 552.102(a). *See generally* Open Records Decision No. 455 (1987). Nor do any of these records contain advice, opinion, or recommendation that is protected under section 552.111. *See* Open Records Decision No. 615 (1993) at 5 (section 552.111 does not protect purely factual information). Accordingly, the governor must withhold all entries under the heading "Criminal Record." The remaining information on these forms must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay H. Guajardo", written in a cursive style.

Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/rho

Ref.: ID# 34956

Enclosures: Submitted documents

cc: Mr. Wayne Slater
Austin Bureau Chief
The Dallas Morning News
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(w/o enclosures)